Usually, the offer of violence is unconditional; but, even when conditional, it is an assault if, as in the instant case, the condition is one which the assailant has no right to impose. *Kline* v. *Kline, supra.* On the other hand, if the threat is accompanied by a lawful condition, as, for example, that the plaintiff cease a trespass on the assailant's property, there is no liability. *Carter* v. *Sutherland, supra.*

BANKRUPTCY—EFFECT OF DISCHARGE—WILLFUL AND MALICIOUS INJURY.—A firm of brokers sold, without the authority or knowledge of the owner, certain certificates of stock which they were holding as collateral for their debt, and appropriated the avails to their own use. Later both the firm and the members were adjudged bankrupts and discharged. Suit was brought by the owner, after discharge against one of the bankrupt members, seeking damages for the wrongful conversion of the stock. The bankrupt pleaded his discharge. *Held,* plaintiff can recover. *McIntyre* v. *Kavanaugh,* 37 Sup. Ct. Rep. 38.

It is a fundamental rule of the law of bankruptcy that a discharge releases the bankrupt from all his debts and liabilities which are provable against his estate, except those which are expressly excepted from the operation of a discharge. *Williams* v. *U. S. Fidelity, etc., Co.,* 236 U. S. 549, 34 A. B. R. 181; *Ford* v. *Blackshear Mfg. Co.,* 140 Ga. 670, 79 S. E. 576. See *Ruhl-Koblegard Co.* v. *Gillespie,* 61 W. Va. 584, 56 S. E. 898, 22 A. B. R. 643, 10 L. R. A. (N. S.) 305, 11 Ann. Cas. 929. And it is universally held, as a general rule, that unliquidated claims for damages arising *ex delicto* are not provable, and hence not dischargeable, in bankruptcy. *Brown* v. *United Button Co.,* 79 C. C. A. 70, 149 Fed. 48, 8 L. R. A. (N. S.) 961, 9 Ann. Cas. 445; *Weisfield* v. *Beale,* 231 Pa. 39, 79 Atl. 878. See *Winfree* v. *Jones,* 104 Va. 39, 51 S. E. 153, 1 L. R. A. (N. S.), 201.

The Bankruptcy Act expressly provides, in section 17, that the liabilities of the bankrupt founded upon his willful and malicious injury to the person or property of another shall remain unaffected by his discharge. *Peters* v. *United States,* 101 C. C. A. 99, 177 Fed. 885, 24 A. B. R. 206; *McChristal* v. *Clisbee,* 190 Mass. 120, 76 N. E. 511, 3 L. R. A. (N. S.) 702, 5 Ann. Cas. 769, 16 A. B. R. 838. See *Tinker* v. *Colwell,* 193 U. S. 473, 11 A. B. R. 568. Prior to the amendment of 1903 to this section, a claim against the bankrupt for a willful and malicious injury to the person or property must have been reduced to a judgment, or else he would have been released from such liability by his discharge. See *Woehrle* v. *Cancline,* 158 Cal. 107, 109 Pac. 888. But this amendment, substituting for the words "judgments in actions" the word "liabilities," did not have the effect of merging the original cause of action into the judgment so as to remove the liability from the excepted class. Under the act as amended a liability for a willful and malicious injury includes a judgment predicated on such cause of action. *Thompson* v. *Judy,* 95 C. C. A. 51, 169 Fed. 553, 22 A. B. R. 154; *Peters* v. *United States, supra.*

The term "willful" used in the Bankruptcy Act, providing that a bankrupt shall not be released by discharge from his liabilities based on his willful and malicious injury to person or property, means nothing more than intentional; while the term "malicious," as used in this connection,

means that disregard of duty which is involved in the intentional doing of a willful act to the injury of another. *Leicester* v. *Hoadley*, 66 Kan. 172, 71 Pac. 318, 65 L. R. A. 523, 9 A. B. R. 318; *Flanders* v. *Mullin*, 80 Vt. 124, 66 Atl. 789, 12 Ann. Cas. 1010, 18 A. B. R. 708. The courts have not always made themselves clear as to what does or does not constitute a willful and malicious injury so as to come within the exception. It seems to be well settled, however, that the rule is not limited to those cases where there has been some physical injury to the person or property, but it extends to those cases where there has been an invasion of another's legal rights accompanied with malice and the intent to injure. *McDonald* v. *Brown*, 23 R. I. 546, 51 Atl. 213, 10 A. B. R. 58, 58 L. R. A. 768, 91 Am. St. Rep. 659; *Leicester* v. *Hoadley, supra*. The act for which the bankrupt is liable must be both willful and malicious. It has been held, therefore, that a judgment predicated upon the negligence of the bankrupt committed without malice is a dischargeable claim. *In re Lorde*, 144 Fed. 320, 16 A. B. R. 201; *Tompkins* v. *Williams*, 137 App. Div. 521, 122 N. Y. Supp. 152, 23 A. B. R. 886. See *Hiteshue* v. *Jones* (Pa. Com. Pleas), 28 A. B. R. 854. It has also been held that a judgment for false imprisonment is not a liability for a willful and malicious injury to the person where the complaint contained no allegation of malice and since malice is not an essential element of such crime. *Johnston* v. *Bruckheimer*, 133 App. Div. 649, 118 N. Y. Supp. 189, 22 A. B. R. 242. But in such cases if malice can be shown or presumed the judgment will remain unaffected by the discharge. *In re Halper*, 82 Misc. Rep. 205, 143 N. Y. Supp. 1005.

While, as a general rule, unliquidated claims for torts are neither provable nor dischargeable, yet if the tort claim has been reduced to a judgment it becomes a provable and dischargeable claim, unless, of course, it is based on an excepted liability. *In re Grout*, 88 Vt. 318, 92 Atl. 646. And it is generally held that if the tort is of such a nature that it may be waived and the claim presented *ex contractu*, a discharge will release the bankrupt from such liability, provided it is not one which is to remain unaffected by the discharge. *Tindle* v. *Birkett*, 205 U. S. 183, 18 A. B. R. 121; *In re Hale*, 161 Fed. 387, 20 A. B. R. 633. See *Mackel* v. *Rochester*, 135 Fed. 904, 14 A. B. R. 429. The authorities are apparently conflicting in applying this doctrine to the waivable tort of conversion. The great weight of authority, and it might be added of reason, holds that the liability for simple conversion is a dischargeable claim. *Crawford* v. *Burke*, 195 U. S. 176, 12 A. B. R. 659; *In re Ennis & Stoppani*, 171 Fed. 755, 22 A. B. R. 679; *Fetcher* v. *Postel*, 114 App. Div. 776, 100 N. Y. Supp. 207, 17 A. B. R. 316. It has been held, however, that a conversion may constitute a willful and malicious injury to the property of another. *Hallagan* v. *Dowell* (Iowa), 139 N. W. 883. But the conflict here is more apparent than real. If the conversion is committed under circumstances involving moral turpitude or intentional wrong then, on principle, it should be considered a willful and malicious injury to property and remain unaffected by the discharge. *Matter of Arnao*, 210 Fed. 395, 32 A. B. R. 88. This is the basis of the decision in the principal case. This doctrine, however, should not be applied to every case of conversion, but should be confined to those cases involving moral

turpitude or intentional wrong on the part of the bankrupt, and where these elements are lacking the liability for the conversion should be dischargeable. *Matter of Levitan,* 224 Fed. 241, 34 A. B. R. 789.

CONTRACTS—RESTRAINT OF TRADE—CONTROLLING PRICES ON RESALE.—The plaintiff made a contract with the defendant similar to those it made with its other customers, whereby it was agreed that the defendant would sell only the plaintiff's goods, which were manufactured by a secret process, and sell them only at certain specified prices. The defendant broke the contract and the plaintiff sued to recover the damages resulting from the breach. *Held,* the contract is void under the Federal Anti-Trust Act. *Stewart, et al.* v. *W. T. Raleigh Medical Co.* (Okla.), 159 Pac. 1187. See NOTES, p. 398.

CONTRIBUTORY NEGLIGENCE—RAILROAD CROSSINGS—DUTY OF TRAVELLER.—The plaintiffs' young daughter was killed by a fast through train as she was attempting to drive across a public crossing in a small village. Her view of the approaching train was somewhat obstructed by empty box cars; but she did not stop, look or listen before attempting to cross the track. *Held,* the plaintiffs cannot recover. *Foreman et ux* v. *Louisiana Western Ry. Co.* (La.), 73 South. 242. For principles involved, see 3 VA. LAW REV. 466.

EMINENT DOMAIN—COMPENSATION—EVIDENCE AS TO VALUE OF PROPERTY.—Evidence was admitted, over objection, in condemnation proceedings, of the price recently given by the applicant for land situated in near proximity to the land in question, in order to ascertain the value of the land involved in the condemnation proceedings. *Held,* the evidence is admissible. *Baltimore & O. R. Co.* v. *Bonafield's Heirs* (W. Va.), 90 S. E. 868.

Ordinarily, evidence of the sale of property similarly situated, made at or about the time of the taking of the condemned property, is admissible, as well in condemnation proceeding as in other suits, to prove the value of the property involved in the suit. *Hunt* v. *Boston,* 152 Mass. 168, 25 N. E. 82; *Baltimore* v. *Smith Brick Co.,* 80 Md. 458, 31 Atl. 423. Where, however, the sale is made to the party who is seeking to acquire the property in litigation, by condemnation proceedings, there are two distinct views as to the admissibility of evidence of the price given for the property. One view is that if the purchase is made under no circumstances of compulsion, and is not in the nature of a compromise, the price paid for such property is admissible. See *Seaboard Air Line Co.* v. *Chamblin,* 108 Va. 42, 60 S. E. 727. Other courts, with perhaps better reason, hold that the amount received by such sales is inadmissible in evidence. *Metropolitan St. Ry. Co.* v. *Walsh,* 197 Mo. 392, 94 S. W. 860; *Peoria Gaslight & C. Co.* v. *Peoria Terminal Ry. Co.,* 146 Ill. 372, 34 N. E. 550, 21 L. R. A. 373; 2 LEWIS, EMINENT DOMAIN, 2 ed., § 447. It is difficult to see how the condition required by the principal case—that the sale should not be in the nature of a compromise—could actually exist, when one of the parties must acquire the property and the other party is compelled to part with it.